

1 Timothy J. Thomason (#009869)
2 Tim.Thomason@mwmf.com
3 Tricia Schafer (#18748)
4 Tricia.Schafer@mwmf.com
5 **MARISCAL, WEEKS, MCINTYRE**
6 **& FRIEDLANDER, P.A.**
7 2901 North Central Avenue, Suite 200
8 Phoenix, Arizona 85012-2705
9 Phone: (602) 285-5000
10 Fax: (602) 285-5100

11 *Attorneys for Defendants*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Denny's, Inc., a California corporation;
DFO, LLC, a Delaware limited liability
company,

Plaintiff,

vs.

Kennedy Restaurants, L.L.C., an Arizona
limited liability company; Sandra D.
Kennedy and John Doe Kennedy, husband
and wife; M.C. Burton, Jr., and Jane Doe
Burton, husband and wife,

Defendants.

Kennedy Restaurants, L.L.C., an Arizona
limited liability company; Sandra D.
Kennedy and M.C. Burton, Jr.,

Counterclaimants,

vs.

Denny's Inc., a California corporation;
DFO, LLC, a Delaware limited liability
company,

Counterdefendants.

NO. 2:09 CV 00741-SRB

**RESPONSE TO MOTION TO
EXPEDITE**

1 Pursuant to this Court's January 7, 2010 Order, Defendants Kennedy Restaurants,
2 L.L.C., Sandra D. Kennedy and M.C. Burton Jr., by and through undersigned counsel,
3 hereby respond to Plaintiffs' Motion to Expedite.

4 The Motion to Expedite provides no compelling reason to adjust the briefing
5 schedule for the pending Motion for Summary Judgment – the response to which would
6 ordinarily be due on February 8, 2010. Fed. R. Civ. P. 6(e), 56(c)(1), LRCiv. 56.1(d).
7 Having failed twice to obtain provisional relief, plaintiffs now make an improper attempt
8 to get an “instant” remedy without any justifiable basis, and to put undue pressure on
9 defendants.

10 Plaintiffs essentially contend that they are entitled to expedited briefing because (a)
11 they are certain that they will win on summary judgment and want to bring this case to a
12 rapid conclusion, and (b) their records show that Defendants have failed to make
13 payments in accordance with the Agreements at issue in this case.

14 These reasons are unpersuasive. If plaintiffs are so confident they will win, and if
15 they wanted such an order sooner rather than later, they should have moved for summary
16 judgment prior to January 5. If plaintiffs' records indeed establish that defendants have
17 been in default for the past 12 weeks [Motion at 3], it is inexplicable why Plaintiffs waited
18 so long to bring the alleged delinquency to anyone's attention.

19 Defendants take the allegations in the Motion for Summary Judgment seriously.
20 Defendants have never believed that the Court's denial of plaintiffs' request for a TRO
21 and plaintiffs' request for a preliminary injunction entitled them to a “free ride” until this
22 case is resolved. [Cf. Motion at 3] Defendants are in the process of gathering
23 documentation regarding recent payments. Defendants are fully prepared to respond to
24 the Motion for Summary Judgment in the time provided under the Rules.

25 Based upon the foregoing, defendants respectfully request that the Motion to
26 Expedite be denied.

1 **RESPECTFULLY SUBMITTED** this 11th day of January, 2010.

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3 **MARISCAL, WEEKS, MCINTYRE**
4 **& FRIEDLANDER, P.A.**

5 By: s/ Tricia Schafer
6 Timothy J. Thomason
7 Tricia Schafer
8 2901 North Central Avenue, Suite
9 200
10 Phoenix, Arizona 85012-2705
11 Attorneys for Defendants

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on this 11th day of January, 2010 I electronically transmitted the
14 attached document to the Clerk's Office using the CM/ECF System for filing, with a
15 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

16 Aaron Schepler
17 scheplera@gtlaw.com
18 Jeffrey Harris Wolf
19 wolfj@gtlaw.com
20 Kami M. Hoskins
21 hoskinsk@gtlaw.com
22 Greenberg Traurig LLP
23 2375 E. Camelback Road, Suite 700
24 Phoenix, AZ 85016
25 Attorneys for Plaintiffs

26 s/ Kristi Arendt